

2011 DRAFTING REQUEST

Bill

Received: 11/12/2010

Received By: **mgallagh**

Wanted: **As time permits**

Companion to LRB:

For: **John Nygren (608) 266-2343**

By/Representing: **Waylon Hurlburt**

May Contact:

Drafter: **mgallagh**

Subject: **Econ. Development - bus. dev.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Nygren@legis.wisconsin.gov**

Carbon copy (CC:) to: **michael.gallagher@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes to the membership and responsibilities of the Small Business Regulatory Review Board; changes to office of regulatory assistance

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mgallagh 11/19/2010 mgallagh 12/03/2010	wjackson 11/30/2010 wjackson 12/03/2010	phenry 12/01/2010	_____	sbasford 12/01/2010		State
/1	mgallagh 02/28/2011	wjackson 03/02/2011	rschluet 12/06/2010	_____	sbasford 12/06/2010	sbasford 12/07/2010	State
/2			phenry 03/07/2011	_____	lparisi 03/07/2011	lparisi 03/07/2011	State

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For: "1/2" @ intro. 3/30/11

<END>

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/P1	mgallagh 11/19/2010	wjackson 11/30/2010	phenry 12/01/2010	_____	sbasford 12/01/2010		State

FE Sent For:

11/12/3
12/6/10
<END>

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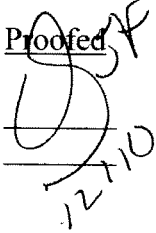
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/P1	mgallagh	plwjl11/29	11/30 pH				

FE Sent For:

<END>

Gallagher, Michael

From: Sundberg, Christopher
Sent: Tuesday, November 09, 2010 4:21 PM
To: Gallagher, Michael
Subject: FW: Draft Change Request
Attachments: LRB-4764_P1

From: Kuczenski, Tracy
Sent: Tuesday, November 09, 2010 4:11 PM
To: Sundberg, Christopher; Hurlburt1, Waylon
Subject: FW: Draft Change Request

Hi Waylon –

I will not be drafting Economic Development bills this session. I am forwarding this request to my colleague, Chris Sundberg, who will either take this request or pass it on to Michael Gallagher, another attorney in our office who will draft ED bills.

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Hurlburt1, Waylon
Sent: Tuesday, November 09, 2010 3:32 PM
To: Kuczenski, Tracy
Subject: Draft Change Request

Hello Tracy,

On page 10, line 10 please change the number of days to 15 business days.
Then could we get this drafted for the 2011 session?

Thanks,

Waylon Hurlburt
Research Assistant
Office of John Nygren
State Representative
89th Assembly District
(888)534-0089

11/18/2010

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...



DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: MPG) (Date: 11 / ¹⁸~~12~~ / 2010)

Note:

***BOTH DRAFTS SHOULD HAVE THE
SAME "REQUESTOR"***

(exception: companion bills)



Please transfer the drafting file for

2009 LRB ~~4764~~ 4764 (For: Rep. / Sen. Nygren)

to the drafting file for

2011 LRB 0458 (For: Rep. / Sen. Nygren)

-----OR-----



Please copy the drafting file for

2011 LRB / (For: Rep. / Sen. _____)

and place it in the drafting file for

2011 LRB _____ (For: Rep. / Sen. _____)



Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history
("guts") from the original file: _____



State of Wisconsin
2009 - 2010 LEGISLATURE

0458
LRB-4764P1
TKK/jlm
WJ
MPL
change throughout

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS: Inserts
are out of
order.

Soon
please

1 AN ACT *to repeal* 560.03 (9); *to amend* 15.155 (5), 20.143 (1) (kc), 227.114 (7m),
2 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79 (3) (intro.), 560.11
3 (2), 560.41 (intro.) and 560.42 (1m) (b); and *to create* 227.04, 560.41 (3), 560.41
4 (4), 560.415, 560.42 (1m) (c), 560.42 (1m) (d), 560.42 (1m) (e), (f) and (g) and
5 560.43 (3) of the statutes; **relating to:** changes to the membership of the Small
6 Business Regulatory Review Board, notification to the Small Business
7 Regulatory Review Board of bills with an economic impact on small businesses,
8 and the role of the Office of Regulatory Assistance in the Department of
9 Commerce ^{Regen} and requiring the exercise of rule-making authority

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the responsibilities of the Office of Regulatory Assistance in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board in Commerce consists of six representatives of small businesses, the chairpersons of the senate and assembly

committees concerned with small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

Rule making: considerations for small businesses

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information and provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the month ~~commencing~~ ^{beginning} after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier ~~than~~ ^{than} the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to determine whether a proposed rule or emergency rule will have a significant

STET
or
economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

Administrative law: considerations for small business

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small businesses made a good faith effort to comply with the rule and the rule does not pose a threat to public health, safety, or welfare, or to the environment or the workplace.

Small business regulatory coordinators and the Office of Regulatory Assistance

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also, under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

This bill locates the ombudsman clearinghouse in the Office of Regulatory Assistance (office). The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

STET
The bill requires Commerce to model the office on the best practices of state and federal small business advocate organizations, to take a proactive role in maintaining and helping small businesses to grow, and to have the goal of creating jobs and a healthy small business sector. The bill also requires Commerce to designate at least one full-time employee to serve as staff to the office. The staff of the office must, in turn, serve as staff to the board and work together with the small business regulatory coordinator of each agency.

* Also, under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the role of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

or the
effectiveness

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 15.155 (5)[√] of the statutes is amended to read:

2 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
3 business regulatory review board, attached to the department of commerce under s.
4 15.03. The board shall consist of ~~a representative of the department of~~
5 ~~administration; a representative of the department of agriculture, trade and~~
6 ~~consumer protection; a representative of the department of children and families; a~~
7 ~~representative of the department of commerce; a representative of the department~~
8 ~~of health services; a representative of the department of natural resources; a~~
9 ~~representative of the department of regulation and licensing; a representative of the~~
10 ~~department of revenue; a representative of the department of workforce~~
11 ~~development; 6~~ 7 representatives of small businesses, as defined in s. 227.114 (1),
12 who shall be appointed for 3-year terms; and the chairpersons of one senate and one
13 assembly committee concerned with small businesses, appointed as are members of
14 standing committees. ~~The representatives of the departments shall be selected by~~
15 ~~the secretary of that department.~~

16 SECTION 2. 20.143 (1) (kc) of the statutes is amended to read:

17 20.143 (1) (kc) *Clean air act compliance assistance.* From moneys transferred
18 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule
19 for assisting the department of natural resources in administering the small
20 business stationary source technical and environmental compliance assistance

1 program under s. 285.79 and for expenses related to serving as ombudsman for small
2 business stationary sources as required under s. 560.03 (9) 560.42 (1m) (d).

3 SECTION 3. 227.04 of the statutes is created to read: 560.415(2)(b)

4 227.04 Considerations for small business. (1) In this section, "small
5 business" has the meaning given in s. 227.114 (1).

6 (2) Consistent with the requirements under s. 895.59 and, to the extent
7 possible, each agency shall do all of the following:

8 (a) Provide assistance to small businesses to help small businesses comply with
9 rules promulgated by the agency.

10 (b) Establish, by rule, reduced fines and alternative enforcement mechanisms
11 for minor violations of administrative rules made by small businesses. The rules
12 promulgated under this paragraph shall include a definition of "minor violation."

13 (c) In deciding whether to impose a fine against a small business found to be
14 in violation of a rule, consider the appropriateness of a written warning, reduced fine,
15 or alternative penalty if all of the following apply:

16 1. The small business has made a good faith effort to comply with the rule.

17 2. The rule violation does not pose a threat to public health, safety, or welfare,
18 or to the environment or the workplace.

19 SECTION 4. 227.114 (7m) of the statutes is amended to read:

20 227.114 (7m) ~~The~~ Each agency shall designate ~~a~~ at least one employee to serve
21 as the small business regulatory coordinator to for the agency, and shall publicize
22 that employee's electronic mail address and telephone number. The small business
23 regulatory coordinator shall act as a contact person for small business regulatory
24 issues for the agency and shall ~~publicize that person's electronic mail address and~~
25 ~~telephone number~~ cooperate with the staff of the office of regulatory assistance as

Insert 5-18

1 required under s. 560.43 (3) to accomplish the objectives of this subsection and s. 227.04 and

2 560.415 (13) 560.42 (1m) (e), (f), and (g)

plain ~~period~~ period

3 SECTION 5. 227.14 (2g) (intro.) of the statutes is amended to read:

4 227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (Intro.)

5 On the same day that an agency submits to the legislative council staff under s.
6 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small
7 businesses, the agency shall submit the proposed rule, the analysis required under
8 sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)
9 to the small business regulatory review board. The board may use cost-benefit
10 analysis to determine the fiscal effect of the rule on small businesses and shall
11 determine whether the proposed rule will have a significant ^{economic} impact on a substantial
12 number of small businesses and whether the agency has complied with subs. (2) and
13 (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each
14 proposed rule shall include provisions detailing how the rule will be enforced. If the
15 board determines that the rule does not include an enforcement provision or that the
16 agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall
17 notify the agency of that determination and ask the agency to comply with any of

18 those requirements. If the board determines that the proposed rule will have a
19 significant economic impact on a substantial number of small businesses, the board
20 may submit to the agency suggested changes in the proposed rule to minimize the
21 economic impact of the proposed rule, or may recommend the withdrawal of the
22 proposed rule under sub. (6). In addition, the board may submit other suggested
23 changes in the proposed rule to the agency, including proposals to reduce the use of
24 cross-references in the rule. The board shall send a report of those suggestions any
25 suggested changes and of any notice of failure to include enforcement provisions or

Insert 6-18

1 to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff.
2 The notification to the agency may include a request that the agency do any of the
3 following:

4 **SECTION 6.** 227.19 (3m) [↓] of the statutes is amended to read:

5 **227.19 (3m) ANALYSIS NOT REQUIRED.** The final regulatory flexibility analysis
6 specified under sub. (3) (e) is not required for any rule if the agency, after complying
7 with s. 227.114 (1) to (5), board determines that the rule will not have a significant
8 economic impact on a substantial number of small businesses.

9 **SECTION 7.** 227.24 (3m) (Intro.) of the statutes is amended to read:

10 **227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD.** (Intro.)

11 On the same day that the agency files a rule under sub. (3) that may have ~~a~~
12 ~~significant an~~ economic impact on small businesses, as defined in s. 227.114 (1), the
13 agency shall submit a copy of the rule to the small business regulatory review board.
14 The board may use cost-benefit analysis to determine the fiscal effect of the
15 emergency rule on small businesses and shall determine whether the emergency
16 rule will have a significant economic impact on a substantial number of small
17 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14

18 (2m). If the board determines that the emergency rule will have a significant
19 economic impact on a substantial number of small businesses, the board may submit
20 to the agency and to the legislative council staff suggested changes in the emergency
21 rule to minimize the economic impact of the emergency rule. If the board determines
22 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
23 shall notify the agency of that determination and ask the agency to comply with any
24 of those provisions. In addition, the board may submit other suggested changes in

Insert 7-18

1 the proposed rule to the agency and may include a request that the agency do any
2 of the following:

3 **SECTION 8.** 285.79 (3) (Intro.) of the statutes is amended to read:

4 **285.79 (3) ASSISTANCE PROGRAM.** (Intro.) The department shall, in cooperation
5 with the ~~small business ombudsman clearinghouse office of regulatory assistance~~
6 under s. ~~560.03 (9)~~ 560.42 (1m) (d), develop and administer a small business
7 stationary source technical and environmental compliance assistance program. The
8 program shall include all of the following:

9 **SECTION 9.** 560.03 (9) of the statutes, as affected by 2009 Wisconsin Act 265,
10 is repealed.

11 **SECTION 10.** 560.11 (2) of the statutes is amended to read:

12 560.11 (2) The employees of the department of commerce who ~~staff the~~ serve
13 as ombudsman for small business ~~ombudsman clearinghouse stationary sources~~
14 under s. ~~560.03 (9)~~ 560.42 (1m) (d) and the employees of the department of natural
15 resources who staff the small business stationary source technical and
16 environmental compliance assistance program under s. 285.79 shall provide the
17 small business environmental council with the assistance necessary to comply with
18 sub. (1).

19 **SECTION 11.** 560.41 (Intro.) of the statutes is amended to read:

20 **560.41 Definitions.** (Intro.) In this subchapter, unless the context requires
21 otherwise:

22 **SECTION 12.** 560.41 (3) of the statutes is created to read:

23 560.41 (3) "Small business" has the meaning given in s. 227.114 (1).

24 **SECTION 13.** 560.41 (4) of the statutes is created to read:

Responsibilities related to
small businesses.

560.41 (4) "Small business regulatory coordinator" means the employee of an agency designated by the agency as required under s. 227.114 (7m).

SECTION 14. 560.415 of the statutes is created to read:

560.415 (1) Office organization. The office shall be modeled on the best

practices of both state and federal small business advocate organizations, shall take

a proactive role in maintaining and helping small businesses grow economically, and

shall have the goal of creating jobs and a healthy small business sector. The office

shall be staffed by at least one full-time employee of the department. The staff of

the office shall serve as staff to the small business regulatory review board and shall

cooperate with the small business regulatory coordinator designated by each agency

under s. 227.114 (7m) to accomplish the objectives of this section, as appropriate.

SECTION 15. 560.42 (1m) (b) of the statutes is amended to read:

560.42 (1m) (b) Serve as a liaison between businesses and agencies, federal agencies, authorities, municipalities, and local economic development organizations.

SECTION 16. 560.42 (1m) (c) of the statutes is created to read:

560.42 (1m) (c) Assist agencies to comply with the requirements under s.

560.43 (3).

SECTION 17. 560.42 (1m) (d) of the statutes is created to read:

560.42 (1m) (d) Serve as ombudsman for small business stationary sources, as

defined in s. 285.79 (1), in connection with the implementation of the federal Clean

Air Act, 42 USC 7401 to 7671q.

SECTION 18. 560.42 (1m) (e), (f) and (g) of the statutes are created to read:

560.42 (1m) (e) Upon the written request of a small business against which an

agency has initiated an enforcement action that may, in the opinion of the small

Office Functions

The office shall do all of the following:

1 560.43 (3) ENCOURAGE PARTICIPATION IN RULE MAKING. Each agency shall

2 establish methods to encourage the participation of small businesses in rule making

3 under s. 227.114 (4) ~~subsections of~~ ~~SS. 227.04, 227.114, and~~
560.415.

4 SECTION 20. Initial applicability.

(1) The treatment of section 227.14 (2g) (intro.) of the statutes first applies to a proposed administrative rule submitted by an agency to the legislative council staff under section 227.15 of the statutes on the effective date of this subsection.

8 (2) The treatment of section 227.24 (3m) (intro.) of the statutes first applies to
9 an emergency rule filed with the legislative reference bureau on the effective date
10 of this subsection.

11 (END)

D-Note

business, cause unnecessary hardship to the small business, review and investigate the circumstances of the enforcement action and prepare recommendations regarding alternative penalties to be imposed upon the small business that will, in the opinion of the office, achieve regulatory compliance by the small business.

(f) Submit to the small business regulatory coordinator of the agency initiating the enforcement action under par. (e) all of the following:

1. A copy of the written request submitted to the office under par. (e)
2. Any recommendations prepared by the office under par. (e)
3. A statement requesting that the small business regulatory coordinator submit to the office within 45 days after receipt of the statement a written response describing the enforcement action taken by the agency against the small business and whether any considerations were made for the small business as a result of the recommendations made under subd. 2.

(g) Annually do all of the following:

1. Compile the written requests received by the office under par. (e), the submissions made by the office under par. (f) and any communications received from enforcing agencies under par. (f).
2. Analyze and evaluate the information under subd. 1. and any other relevant information to determine regulatory enforcement trends and the efficacy of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.
3. Report the information and findings under subds. 1. and 2. to the governor and to the legislature under s. 13.172 (2).

SECTION 19. 560.43 (3) of the statutes is created to read:

Insert from p. 9, l. 12-15 ↓

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0458/Plins
MPG:.....

Insert 6-18

1 (Nof)

2 If the board determines that the proposed rule will not have a significant
3 economic impact on a substantial number of small businesses, the board shall submit
4 a statement to that effect to the agency that sets forth the reason for the board's
5 decision.

(End Insert 6-18)

Insert 7-18

6 (Nof)

7 If the board determines that the proposed rule will not have a significant
8 economic impact on a substantial number of small businesses, the board shall submit
9 a statement to that effect to the agency that sets forth the reason for the board's
10 decision.

(End Insert 7-18)

Insert 5-18

11 SECTION ~~227.114~~ (6) of the statutes is amended to read:

12 227.114 (6) When an agency, under s. 227.20 (1), files with the legislative
13 reference bureau a rule that is subject to this section, the agency shall include with
14 the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary
15 of the comments of the legislative standing committees, if any. If, under s. 227.19
16 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall
17 include with the rule a statement of the reason for the agency's small business
18 regulatory review board's determination under s. 227.19 (3m) that the rule will not
19 have a significant economic impact on a substantial number of small businesses. The
legislative reference bureau shall publish the summaries or the statement in the
register with the rule.

History: 1985 a. 182; 1995 a. 27 s. 9116 (5); 1999 a. 9; 2003 a. 145; 2005 a. 249; 2007 a. 20.

(End Insert 5-18)

LPS: Please merge this
scored text with the
scored text already in the draft

Insert D-Note

must

1 Finally, under current s. 227.114 (6), an agency ~~is required~~ to submit a
2 statement of the reason for its determination under current s. 227.19 (3m) that a
3 proposed rule will not have a significant economic impact on a substantial number
4 of small businesses, and a final regulatory flexibility analysis is therefore not
5 required. In the proposal, it is the board that makes the economic impact
6 determination, and the draft includes changes to s. 227.114 (6) consistent with that
7 shift in responsibility to the board. Additionally, under ss. 227.14 (2g) (intro.) and
8 227.24 (3m) ^(intro.) of the draft, I have included a requirement that the board submit a
9 statement to the agency of the board's reason for its determination that the proposed
10 rule will not have a significant economic impact on a substantial number of small
11 businesses, so that agencies may continue to meet their reporting obligations under
12 s. 227.114 (6). Are these changes acceptable?

(End Insert D-Note)

LPS: please format
for D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0458/P1dn

MPG:.....

wly

Date

Representative Nygren

Please review this draft carefully to ensure that it is consistent with your intent.

You requested a redraft of LRB draft number 09-4764 for the 2011 session, with one change. I made some further edits in addition to that change.

I consolidated the provisions covering the new responsibilities of the ^{9.}Office of Regulatory Assistance (office) related to small businesses in ~~the newly~~ created s. 560.415. The previous draft located those provisions in current s. 560.42, which relates primarily to assisting businesses, large and small, with permits. Placing the responsibilities unique to small businesses in a separate section makes more sense. Are these changes acceptable?

Also, the previous draft ~~appears to have~~ inadvertently retained a provision staffing the office with one full-time department employee from an earlier draft that proposed to create ~~a completely new office~~ the Office of Small Business Advocate. I deleted that provision in this draft because current s. 560.42 (5) already staffs the office with two full-time employees of the department. Are these changes acceptable?

(2) (a) ^{also} Finally, I extended the agency responsibilities listed under ^{proposed} ~~the new~~ s. 560.43 (3) to include cooperation relating to the new small business functions of the office and to make that section more consistent with the references to that section in ss. 227.114 (7m) and 560.42 (2m) of the draft. Are these changes acceptable?

Please do not hesitate to contact me with any questions. Thank you.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

Insert D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0458/P1dn
MPG:wlj:ph

December 1, 2010

Representative Nygren

Please review this draft carefully to ensure that it is consistent with your intent.

You requested a redraft of LRB draft number 09-4764 for the 2011 session, with one change. I made some further edits in addition to that change.

I consolidated the provisions covering the new responsibilities of the Office of Regulatory Assistance (office) related to small businesses in created s. 560.415. The previous draft located those provisions in current s. 560.42, which relates primarily to assisting businesses, large and small, with permits. Placing the responsibilities unique to small businesses in a separate section makes more sense. Are these changes acceptable?

Also, the previous draft inadvertently retained a provision staffing the office with one full-time department employee from an earlier draft that proposed to create the Office of Small Business Advocate. I deleted that provision in this draft because current s. 560.42 (5) already staffs the office with two full-time employees of the department. Are these changes acceptable?

I also extended the agency responsibilities listed under proposed s. 560.43 (3) to include cooperation relating to the new small business functions of the office and to make that section more consistent with the references to that section in ss. 227.114 (7m) and 560.42 (2) (a) of the draft. Are these changes acceptable?

Finally, under current s. 227.114 (6), an agency must submit a statement of the reason for its determination under current s. 227.19 (3m) that a proposed rule will not have a significant economic impact on a substantial number of small businesses, and a final regulatory flexibility analysis is therefore not required. In the proposal, it is the board that makes the economic impact determination, and the draft includes changes to s. 227.114 (6) consistent with that shift in responsibility to the board. Additionally, under ss. 227.14 (2g) (intro.) and 227.24 (3m) (intro.) of the draft, I have included a requirement that the board submit a statement to the agency of the board's reason for its determination that the proposed rule will not have a significant economic impact on a substantial number of small businesses, so that agencies may continue to meet their reporting obligations under s. 227.114 (6). Are these changes acceptable?

Please do not hesitate to contact me with any questions. Thank you.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

Gallagher, Michael

From: Hurlburt1, Waylon
Sent: Friday, December 03, 2010 8:49 AM
To: Gallagher, Michael
Subject: One Change and Jacket Request to Draft LRB 11-0458/P1 Topic: Changes to Small Business Regulatory Review Board; changes to office of regulatory assistance
Attachments: LRB-0458_P1; LRB-0458_P1 Drafters_Note

Mike,

Thanks for doing this draft. I like your changes. Could you please delete one thing and then please send it to editing so I can jacket it for the Assembly?

Delete line 18 on page 5 (*or to the environment or the workplace*). I think it is repetitive and could be abused. I think we cover pretty much everything with "public health, safety, or welfare."

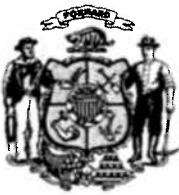
Thanks,

Waylon Hurlburt
Research Assistant
Office of John Nygren
State Representative
89th Assembly District
(888)534-0089

From: Basford, Sarah
Sent: Wednesday, December 01, 2010 12:01 PM
To: Rep.Nygren
Subject: Draft review: LRB 11-0458/P1 Topic: Changes to the membership and responsibilities of the Small Business Regulatory Review Board; changes to office of regulatory assistance

Following is the PDF version of draft LRB 11-0458/P1 and drafter's note.

12/3/2010



12-3-2010
State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0458/P1

MPG:wli:ph

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** ^{Regen} ~~to repeal~~ 560.03 (9); **to amend** 15.155 (5), 20.143 (1) (kc), 227.114 (6),
2 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79 (3)
3 (intro.), 560.11 (2), 560.41 (intro.) and 560.42 (1m) (b); and **to create** 227.04,
4 560.41 (3), 560.41 (4), 560.415 and 560.43 (3) of the statutes; **relating to:**
5 changes to the membership of the Small Business Regulatory Review Board,
6 notification to the Small Business Regulatory Review Board of bills with an
7 economic impact on small businesses, the role of the Office of Regulatory
8 Assistance in the Department of Commerce, and requiring the exercise of
9 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the responsibilities of the Office of Regulatory Assistance in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board consists of six representatives of small businesses, the chairpersons of the senate and assembly committees concerned with

small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

Rule making: considerations for small businesses

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the first month beginning after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to then determine whether a proposed rule or emergency rule will have a significant

economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

Administrative law: considerations for small business

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small business made a good faith effort to comply with the rule and the rule violation does not pose a threat to public health, safety, or welfare, to the environment, or to the workplace.

Small business regulatory coordinators and the Office of Regulatory Assistance

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

This bill locates the ombudsman clearinghouse in the Office of Regulatory Assistance (office). The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the office on the best practices of state and federal small business advocacy organizations, to take a proactive role in maintaining and helping small businesses grow, and to have the goal of creating jobs and a healthy small business sector. The staff of the office must serve as staff to the board and work with the small business regulatory coordinator of each agency.

Also, under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the effectiveness of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.155 (5) of the statutes is amended to read:

2 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
3 business regulatory review board, attached to the department of commerce under s.
4 15.03. The board shall consist of ~~a representative of the department of~~
5 ~~administration; a representative of the department of agriculture, trade and~~
6 ~~consumer protection; a representative of the department of children and families; a~~
7 ~~representative of the department of commerce; a representative of the department~~
8 ~~of health services; a representative of the department of natural resources; a~~
9 ~~representative of the department of regulation and licensing; a representative of the~~
10 ~~department of revenue; a representative of the department of workforce~~
11 ~~development; 6~~ 7 representatives of small businesses, as defined in s. 227.114 (1),
12 who shall be appointed for 3-year terms, and the chairpersons of one senate and one
13 assembly committee concerned with small businesses, appointed as are members of
14 standing committees. ~~The representatives of the departments shall be selected by~~
15 ~~the secretary of that department.~~

16 **SECTION 2.** 20.143 (1) (kc) of the statutes is amended to read:

17 20.143 (1) (kc) *Clean air act compliance assistance.* From moneys transferred
18 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule
19 for assisting the department of natural resources in administering the small
20 business stationary source technical and environmental compliance assistance

1 program under s. 285.79 and for expenses related to serving as ombudsman for small
2 business stationary sources as required under s. ~~560.03 (9)~~ 560.415 (2) (b).

3 **SECTION 3.** 227.04 of the statutes is created to read:

4 **227.04 Considerations for small business. (1)** In this section, "small
5 business" has the meaning given in s. 227.114 (1).

6 **(2)** Consistent with the requirements under s. 895.59 and, to the extent
7 possible, each agency shall do all of the following:

8 (a) Provide assistance to small businesses to help small businesses comply with
9 rules promulgated by the agency.

10 (b) Establish, by rule, reduced fines and alternative enforcement mechanisms
11 for minor violations of administrative rules made by small businesses. The rules
12 promulgated under this paragraph shall include a definition of "minor violation."

13 (c) In deciding whether to impose a fine against a small business found to be
14 in violation of a rule, consider the appropriateness of a written warning, reduced fine,
15 or alternative penalty if all of the following apply:

16 1. The small business has made a good faith effort to comply with the rule.

17 2. The rule violation does not pose a threat to public health, safety, or welfare,
18 or to the environment or the workplace.

19 **SECTION 4.** 227.114 (6) of the statutes is amended to read:

20 227.114 **(6)** When an agency, under s. 227.20 (1), files with the legislative
21 reference bureau a rule that is subject to this section, the agency shall include with
22 the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary
23 of the comments of the legislative standing committees, if any. If, under s. 227.19
24 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall
25 include with the rule a statement of the reason for the agency's small business

1 regulatory review board's determination under s. 227.19 (3m) that the rule will not
2 have a significant economic impact on a substantial number of small businesses. The
3 legislative reference bureau shall publish the summaries or the statement in the
4 register with the rule.

5 **SECTION 5.** 227.114 (7m) of the statutes is amended to read:

6 227.114 (7m) The Each agency shall designate ~~a~~ at least one employee to serve
7 as the small business regulatory coordinator ~~to~~ for the agency, and shall publicize
8 that employee's electronic mail address and telephone number. The small business
9 regulatory coordinator shall act as a contact person for small business regulatory
10 issues for the agency and shall ~~publicize that person's electronic mail address and~~
11 ~~telephone number~~ cooperate with the staff of the office of regulatory assistance as
12 required under s. 560.43 (3) to accomplish the objectives of this section and ss. 227.04
13 and 560.415.

14 **SECTION 6.** 227.14 (2g) (intro.) of the statutes is amended to read:

15 227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
16 On the same day that an agency submits to the legislative council staff under s.
17 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small
18 businesses, the agency shall submit the proposed rule, the analysis required under
19 sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)
20 to the small business regulatory review board. The board may use cost-benefit
21 analysis to determine the fiscal effect of the rule on small businesses and shall
22 determine whether the proposed rule will have a significant economic impact on a
23 substantial number of small businesses and whether the agency has complied with
24 subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and
25 (1s), each proposed rule shall include provisions detailing how the rule will be

1 enforced. If the board determines that the rule does not include an enforcement
2 provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2)
3 or (3), the board shall notify the agency of that determination and ask the agency to
4 comply with any of those requirements. If the board determines that the proposed
5 rule will not have a significant economic impact on a substantial number of small
6 businesses, the board shall submit a statement to that effect to the agency that sets
7 forth the reason for the board's decision. If the board determines that the proposed
8 rule will have a significant economic impact on a substantial number of small
9 businesses, the board may submit to the agency suggested changes in the proposed
10 rule to minimize the economic impact of the proposed rule, or may recommend the
11 withdrawal of the proposed rule under sub. (6). In addition, the board may submit
12 other suggested changes in the proposed rule to the agency, including proposals to
13 reduce the use of cross-references in the rule. The board shall send a report of ~~those~~
14 ~~suggestions~~ any suggested changes and of any notice of failure to include
15 enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to
16 the legislative council staff. The notification to the agency may include a request that
17 the agency do any of the following:

18 **SECTION 7.** 227.19 (3m) of the statutes is amended to read:

19 227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis
20 specified under sub. (3) (e) is not required for any rule if the ~~agency, after complying~~
21 ~~with s. 227.114 (1) to (5),~~ board determines that the rule will not have a significant
22 economic impact on a substantial number of small businesses.

23 **SECTION 8.** 227.24 (3m) (intro.) of the statutes is amended to read:

24 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
25 On the same day that the agency files a rule under sub. (3) that may have –a

1 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the
2 agency shall submit a copy of the rule to the small business regulatory review board.
3 The board may use cost-benefit analysis to determine the fiscal effect of the
4 emergency rule on small businesses and shall determine whether the emergency
5 rule will have a significant economic impact on a substantial number of small
6 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14
7 (2m). If the board determines that the ~~proposed~~ ^{emergency} rule will not have a significant
8 economic impact on a substantial number of small businesses, the board shall submit
9 a statement to that effect to the agency that sets forth the reason for the board's
10 decision. If the board determines that the emergency rule will have a significant
11 economic impact on a substantial number of small businesses, the board may submit
12 to the agency and to the legislative council staff suggested changes in the emergency
13 rule to minimize the economic impact of the emergency rule. If the board determines
14 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
15 shall notify the agency of that determination and ask the agency to comply with any
16 of those provisions. In addition, the board may submit other suggested changes in
17 the proposed rule to the agency and may include a request that the agency do any
18 of the following:

19 **SECTION 9.** 285.79 (3) (intro.) of the statutes is amended to read:

20 285.79 (3) ASSISTANCE PROGRAM. (intro.) The department shall, in cooperation
21 with the ~~small business ombudsman clearinghouse~~ office of regulatory assistance
22 under s. ~~560.03 (9)~~ 560.415 (2) (b), develop and administer a small business
23 stationary source technical and environmental compliance assistance program. The
24 program shall include all of the following:

25 **SECTION 10.** 560.03 (9) of the statutes is repealed.

1 **SECTION 11.** 560.11 (2) of the statutes is amended to read:

2 560.11 (2) The employees of the department of commerce who ~~staff the~~ serve
3 as ombudsman for small business ~~ombudsman-clearinghouse~~ stationary sources
4 under s. ~~560.03 (9)~~ 560.415 (2) (b) and the employees of the department of natural
5 resources who staff the small business stationary source technical and
6 environmental compliance assistance program under s. 285.79 shall provide the
7 small business environmental council with the assistance necessary to comply with
8 sub. (1).

9 **SECTION 12.** 560.41 (intro.) of the statutes is amended to read:

10 **560.41 Definitions.** (intro.) In this subchapter, unless the context requires
11 otherwise:

12 **SECTION 13.** 560.41 (3) of the statutes is created to read:

13 560.41 (3) "Small business" has the meaning given in s. 227.114 (1).

14 **SECTION 14.** 560.41 (4) of the statutes is created to read:

15 560.41 (4) "Small business regulatory coordinator" means the employee of an
16 agency designated by the agency as required under s. 227.114 (7m).

17 **SECTION 15.** 560.415 of the statutes is created to read:

18 **560.415 Responsibilities related to small businesses.** (1) OFFICE
19 ORGANIZATION. The office shall be modeled on the best practices of both state and
20 federal small business advocacy organizations, shall take a proactive role in
21 maintaining and helping small businesses grow economically, and shall have the
22 goal of creating jobs and a healthy small business sector. The staff of the office shall
23 serve as staff to the small business regulatory review board and shall cooperate with
24 the small business regulatory coordinator designated by each agency under s.
25 227.114 (7m) to accomplish the objectives of this section, as appropriate.

1 (2) OFFICE FUNCTIONS. The office shall do all of the following:

2 (a) Assist agencies to comply with the requirements under s. 560.43 (3).

3 (b) Serve as ombudsman for small business stationary sources, as defined in
4 s. 285.79 (1), in connection with the implementation of the federal Clean Air Act, 42
5 USC 7401 to 7671q.

6 (c) Upon the written request of a small business against which an agency has
7 initiated an enforcement action that may, in the opinion of the small business, cause
8 unnecessary hardship to the small business, review and investigate the
9 circumstances of the enforcement action and prepare recommendations regarding
10 alternative penalties to be imposed upon the small business that will, in the opinion
11 of the office, achieve regulatory compliance by the small business.

12 (d) Submit to the small business regulatory coordinator of the agency initiating
13 the enforcement action under par. (c) all of the following:

14 1. A copy of the written request submitted to the office under par. (c).

15 2. Any recommendations prepared by the office under par. (c).

16 3. A statement requesting that the small business regulatory coordinator
17 submit to the office within 15 business days after receipt of the statement a written
18 response describing the enforcement action taken by the agency, or that the agency
19 intends to take, against the small business and what, if any, considerations were
20 made for the small business as a result of the recommendations made under subd.
21 2.

22 (e) Annually do all of the following:

23 1. Compile the written requests received by the office under par. (c), the
24 submissions made by the office under par. (d), and any communications received
25 from agencies under par. (d).

2. Analyze and evaluate the information under subd. 1. and any other relevant information to determine regulatory enforcement trends and the efficacy of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

3. Report the information and findings under subds. 1. and 2. to the governor and to the legislature under s. 13.172 (2).

SECTION 16. 560.42 (1m) (b) of the statutes is amended to read:

560.42 **(1m)** (b) Serve as a liaison between businesses and agencies, federal agencies, authorities, municipalities, and local economic development organizations.

SECTION 17. 560.43 (3) of the statutes is created to read:

560.43 **(3) ENCOURAGE PARTICIPATION IN RULE MAKING.** Each agency shall establish methods to encourage the participation of small businesses in rule making under s. 227.114 (4), and shall cooperate with the office to accomplish the objectives of ss. 227.04, 227.114, and 560.415.

SECTION 18. Initial applicability.

(1) The treatment of section 227.14 (2g) (intro.) of the statutes first applies to a proposed administrative rule submitted by an agency to the legislative council staff under section 227.15 of the statutes on the effective date of this subsection.

(2) The treatment of section 227.24 (3m) (intro.) of the statutes first applies to an emergency rule filed with the legislative reference bureau on the effective date of this subsection.

(END)

Duerst, Christina

From: Hurlburt1, Waylon

Sent: Monday, December 06, 2010 8:21 AM

To: LRB.Legal

Subject: Draft Review: LRB 11-0458/1 Topic: Changes to the membership and responsibilities of the Small Business Regulatory Review Board; changes to office of regulatory assistance

Please Jacket LRB 11-0458/1 for the ASSEMBLY.

12/6/2010

Gallagher, Michael

From: OBrien, Kyle
Sent: Thursday, February 10, 2011 11:11 AM
To: Gallagher, Michael
Subject: FW: Message from "313EAST"

Attachments: 20110210104710042.pdf



2011021010471004

2.pdf (666 KB)...

Hey Mike,

Here are the changes that we are looking at, all of which are really on page 3 of the LRB analysis that you wrote.

If you need anything please let me know.

Thanks,

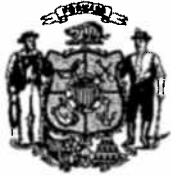
- Kyle

-----Original Message-----

From: networkscanning@legis.wisconsin.gov [mailto:networkscanning@legis.wisconsin.gov]
Sent: Thursday, February 10, 2011 10:47 AM
To: OBrien, Kyle
Subject: Message from "313EAST"

This E-mail was sent from "313EAST" (MP 6001/LD360).

Scan Date: 02.10.2011 10:47:09 (-0600)
Queries to: networkscanning@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE

Draft Markup



LRB-0458/1
MPG:wlj:rs

2011 BILL

1 **AN ACT** *to repeal* 560.03 (9); *to amend* 15.155 (5), 20.143 (1) (kc), 227.114 (6),
2 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79 (3)
3 (intro.), 560.11 (2), 560.41 (intro.) and 560.42 (1m) (b); and *to create* 227.04,
4 560.41 (3), 560.41 (4), 560.415 and 560.43 (3) of the statutes; **relating to:**
5 changes to the membership of the Small Business Regulatory Review Board,
6 notification to the Small Business Regulatory Review Board of bills with an
7 economic impact on small businesses, the role of the Office of Regulatory
8 Assistance in the Department of Commerce, and requiring the exercise of
9 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the responsibilities of the Office of Regulatory Assistance in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board consists of six representatives of small businesses, the chairpersons of the senate and assembly committees concerned with

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small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

Rule making: considerations for small businesses

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the first month beginning after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to then determine whether a proposed rule or emergency rule will have a significant

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economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

Insert that the recommendations must also be forwarded to the appropriate Standing Committee overseeing the specific rule on or before the rules introduction specific committee
Administrative law: considerations for small businesses *Insert that the recommendations must also be forwarded to the appropriate Standing Committee overseeing the specific rule on or before the rules introduction specific committee*

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small business made a good faith effort to comply with the rule and the rule violation does not pose a threat to public health, safety, or welfare.

Small business regulatory coordinators and the Office of Regulatory Assistance

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

This bill locates the ombudsman clearinghouse in the Office of Regulatory Assistance (office). The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the office on the best practices of state and federal small business advocacy organizations, to take a proactive role in maintaining and helping small businesses grow, and to have the goal of creating jobs and a healthy small business sector. The staff of the office must serve as staff to the board and work with the small business regulatory coordinator of each agency.

Also, under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the effectiveness of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 15.155 (5) of the statutes is amended to read:

2 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
3 business regulatory review board, attached to the department of commerce under s.
4 15.03. The board shall consist of ~~a representative of the department of~~
5 ~~administration; a representative of the department of agriculture, trade and~~
6 ~~consumer protection; a representative of the department of children and families; a~~
7 ~~representative of the department of commerce; a representative of the department~~
8 ~~of health services; a representative of the department of natural resources; a~~
9 ~~representative of the department of regulation and licensing; a representative of the~~
10 ~~department of revenue; a representative of the department of workforce~~
11 ~~development; 6 7~~ representatives of small businesses, as defined in s. 227.114 (1),
12 who shall be appointed for 3-year terms, and the chairpersons of one senate and one
13 assembly committee concerned with small businesses, appointed as are members of
14 standing committees. ~~The representatives of the departments shall be selected by~~
15 ~~the secretary of that department.~~

16 SECTION 2. 20.143 (1) (kc) of the statutes is amended to read:

17 20.143 (1) (kc) *Clean air act compliance assistance.* From moneys transferred
18 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule
19 for assisting the department of natural resources in administering the small
20 business stationary source technical and environmental compliance assistance

Gallagher, Michael

From: OBrien, Kyle
Sent: Tuesday, February 15, 2011 10:32 PM
To: Gallagher, Michael
Subject: RE: Message from "313EAST"

Yes, without a doubt. Thank you very much for catching this.

Please feel free to email or call me with any more suggestions.

Thanks again Mike.

- Kyle

-----Original Message-----

From: Gallagher, Michael
Sent: Tuesday, February 15, 2011 2:59 PM
To: OBrien, Kyle
Subject: RE: Message from "313EAST"

One more thing:

The draft creates under a new section, s. 227.04, certain obligations for agencies to help small businesses comply with rules, establish reduced fines and alternative enforcement mechanisms, and consider alternative penalties for small businesses for rules violations under certain circumstances.

While the new draft retains the small business ombudsman clearinghouse as distinct from the office of regulatory compliance, it may make sense to include a requirement that the office of regulatory compliance assist small businesses regarding the objectives in s. 227.04. Do you want such a requirement in the draft?

Mike

-----Original Message-----

From: OBrien, Kyle
Sent: Tuesday, February 15, 2011 2:10 PM
To: Gallagher, Michael
Subject: RE: Message from "313EAST"

Yeah, that would be great if you could include that as well. That would be the intent.

Thanks much,

- Kyle

-----Original Message-----

From: Gallagher, Michael
Sent: Tuesday, February 15, 2011 1:54 PM
To: OBrien, Kyle
Subject: RE: Message from "313EAST"

Kyle, referral to standing committee is one of the last steps in the rules promulgation process. Under s. 227.19 (2) and (3), the notice and report submitted to both houses of the legislature and with is then referred to appropriate standing committees, must include a response to any report submitted to the agency by the small business regulatory review board. However, I can include in the draft a statement that explicitly requires submission of the board's suggested changes, etc. with the notice and report to the legislature under s. 227.19 (2) and (3). Is that the intent?

Thanks.

Mike

Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

-----Original Message-----

From: OBrien, Kyle
Sent: Thursday, February 10, 2011 11:12 AM
To: Gallagher, Michael
Subject: RE: Message from "313EAST"

Thanks Mike. I really appreciate your help with this.

- Kyle

-----Original Message-----

From: Gallagher, Michael
Sent: Thursday, February 10, 2011 11:11 AM
To: OBrien, Kyle
Subject: RE: Message from "313EAST"

Got it. Thanks.

Mike

-----Original Message-----

From: OBrien, Kyle
Sent: Thursday, February 10, 2011 11:11 AM
To: Gallagher, Michael
Subject: FW: Message from "313EAST"

Hey Mike,

Here are the changes that we are looking at, all of which are really on page 3 of the LRB analysis that you wrote.

If you need anything please let me know.

Thanks,

- Kyle

-----Original Message-----

From: networkscanning@legis.wisconsin.gov [mailto:networkscanning@legis.wisconsin.gov]
Sent: Thursday, February 10, 2011 10:47 AM
To: OBrien, Kyle
Subject: Message from "313EAST"

This E-mail was sent from "313EAST" (MP 6001/LD360).

Scan Date: 02.10.2011 10:47:09 (-0600)
Queries to: networkscanning@legis.wisconsin.gov

Gallagher, Michael

From: OBrien, Kyle
Sent: Tuesday, January 25, 2011 4:45 PM
To: Gallagher, Michael
Subject: RE: Draft review: LRB 11-0458/1 Topic: Changes to the membership and responsibilities of the Small Business Regulatory Review Board; changes to office of regulatory assistance

Great. Thanks Mike.

The bill jacket is coming your way as we speak.

Thanks!

- Kyle

From: Gallagher, Michael
Sent: Tuesday, January 25, 2011 4:40 PM
To: OBrien, Kyle
Subject: FW: Draft review: LRB 11-0458/1 Topic: Changes to the membership and responsibilities of the Small Business Regulatory Review Board; changes to office of regulatory assistance

Kyle:

Here is an electronic copy of the bill you mentioned. You can call, e-mail, or send me a marked-up copy indicating the desired changes. Please let me know if you have any questions.

Thanks.

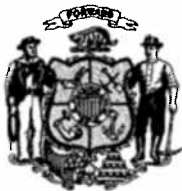
Mike

Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

From: Basford, Sarah
Sent: Monday, December 06, 2010 8:17 AM
To: Gallagher, Michael
Subject: Draft review: LRB 11-0458/1 Topic: Changes to the membership and responsibilities of the Small Business Regulatory Review Board; changes to office of regulatory assistance

Draft Requester: John Nygren

Following is the PDF version of draft LRB 11-0458/1.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0458/1

MPG:wlj:rs

Stays

2011 BILL

Insert

Re-gen

1 AN ACT *to repeal* 560.03 (9); *to amend* 15.155 (5), 20.143 (1) (kc), 227.114 (6),
2 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79 (3)
3 (intro.), 560.11 (2), 560.41 (intro.) and 560.42 (1m) (b); and *to create* 227.04,
4 560.41 (3), 560.41 (4), 560.415 and 560.43 (3) of the statutes; **relating to:**
5 changes to the membership of the Small Business Regulatory Review Board,
6 notification to the Small Business Regulatory Review Board of bills with an
7 economic impact on small businesses, the role of the Office of Regulatory
8 Assistance in the Department of Commerce, and requiring the exercise of
9 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the responsibilities of the Office of Regulatory Assistance in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board consists of six representatives of small businesses, the chairpersons of the senate and assembly committees concerned with

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small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven. ✓

Rule making: considerations for small businesses

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the first month beginning after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to then determine whether a proposed rule or emergency rule will have a significant

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economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

Administrative law: considerations for small business ✓

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small business made a good faith effort to comply with the rule and the rule violation does not pose a threat to public health, safety, or welfare.

Small business regulatory coordinators and the Office of Regulatory Assistance

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

This bill locates the ombudsman clearinghouse in the Office of Regulatory Assistance (office). The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the office on the best practices of state and federal small business advocacy organizations, to take a proactive role in maintaining and helping small businesses grow, and to have the goal of creating jobs and a healthy small business sector. The staff of the office must serve as staff to the board and work with the small business regulatory coordinator of each agency.

Also, under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the effectiveness of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

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For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.155 (5) of the statutes is amended to read:

2 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
3 business regulatory review board, attached to the department of commerce under s.
4 15.03. The board shall consist of ~~a representative of the department of~~
5 ~~administration; a representative of the department of agriculture, trade and~~
6 ~~consumer protection; a representative of the department of children and families; a~~
7 ~~representative of the department of commerce; a representative of the department~~
8 ~~of health services; a representative of the department of natural resources; a~~
9 ~~representative of the department of regulation and licensing; a representative of the~~
10 ~~department of revenue; a representative of the department of workforce~~
11 ~~development; 6~~ 7 representatives of small businesses, as defined in s. 227.114 (1),
12 who shall be appointed for 3-year terms; and the chairpersons of one senate and one
13 assembly committee concerned with small businesses, appointed as are members of
14 standing committees. The representatives of the departments shall be selected by
15 the secretary of that department.

16 **SECTION 2.** 20.143 (1) (kc) of the statutes is amended to read:

17 20.143 (1) (kc) ~~Clean air act compliance assistance.~~ From moneys transferred
18 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule
19 for assisting the department of natural resources in administering the small
20 business stationary source technical and environmental compliance assistance

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1 program under ~~s. 285.79~~ and for expenses related to serving as ombudsman for small
2 business stationary sources as required under s. ~~560.03 (9)~~ 560.415 (2) (b).

3 SECTION 3. 227.04 of the statutes is created to read:

4 **227.04 Considerations for small business.** (1) In this section, "small
5 business" has the meaning given in s. 227.114 (1).

6 (2) Consistent with the requirements under s. 895.59 and, to the extent
7 possible, each agency shall do all of the following:

8 (a) Provide assistance to small businesses to help small businesses comply with
9 rules promulgated by the agency.

10 (b) Establish, by rule, reduced fines and alternative enforcement mechanisms
11 for minor violations of administrative rules made by small businesses. The rules
12 promulgated under this paragraph shall include a definition of "minor violation."

13 (c) In deciding whether to impose a fine against a small business found to be
14 in violation of a rule, consider the appropriateness of a written warning, reduced fine,
15 or alternative penalty if all of the following apply:

- 16 1. The small business has made a good faith effort to comply with the rule.
17 2. The rule violation does not pose a threat to public health, safety, or welfare.

18 SECTION 4. 227.114 (6) of the statutes is amended to read:

19 227.114 (6) When an agency, under s. 227.20 (1), files with the legislative
20 reference bureau a rule that is subject to this section, the agency shall include with
21 the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary
22 of the comments of the legislative standing committees, if any. If, under s. 227.19
23 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall
24 include with the rule a statement of the reason for the agency's small business
25 regulatory review board's determination under s. ~~227.19 (3m)~~ that the rule will not

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1 have a significant economic impact on a substantial number of small businesses. The
2 legislative reference bureau shall publish the summaries or the statement in the
3 register with the rule.

4 **SECTION 5.** 227.114 (7m) of the statutes is amended to read:

5 227.114 (7m) The Each agency shall designate ~~a~~ at least one employee to serve
6 as the small business regulatory coordinator to for the agency, and shall publicize
7 that employee's electronic mail address and telephone number. The small business
8 regulatory coordinator shall act as a contact person for small business regulatory
9 issues for the agency and shall publicize that person's electronic mail address and
10 telephone number cooperate with the staff of the office of regulatory assistance as
11 required under s. 560.43 (3) to accomplish the objectives of this section and ss. 227.04
12 and 560.415. and the small business ombudsman
clearinghouse

13 **SECTION 6.** 227.14 (2g) (intro.) of the statutes is amended to read:

14 227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
15 On the same day that an agency submits to the legislative council staff under s.
16 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small
17 businesses, the agency shall submit the proposed rule, the analysis required under
18 sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)
19 to the small business regulatory review board. The board may use cost-benefit
20 analysis to determine the fiscal effect of the rule on small businesses and shall
21 determine whether the proposed rule will have a significant economic impact on a
22 substantial number of small businesses and whether the agency has complied with
23 subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and
24 (1s), each proposed rule shall include provisions detailing how the rule will be
25 enforced. If the board determines that the rule does not include an enforcement

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1 provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2)
2 or (3), the board shall notify the agency of that determination and ask the agency to
3 comply with any of those requirements. If the board determines that the proposed
4 rule will not have a significant economic impact on a substantial number of small
5 businesses, the board shall submit a statement to that effect to the agency that sets
6 forth the reason for the board's decision. If the board determines that the proposed
7 rule will have a significant economic impact on a substantial number of small
8 businesses, the board may submit to the agency suggested changes in the proposed
9 rule to minimize the economic impact of the proposed rule, or may recommend the
10 withdrawal of the proposed rule under sub. (6). In addition, the board may submit
11 other suggested changes in the proposed rule to the agency, including proposals to
12 reduce the use of cross-references in the rule. The board shall send a report of those
13 suggestions any suggested changes and of any notice of failure to include
14 enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to
15 the legislative council staff. The notification to the agency may include a request that
16 the agency do any of the following:

17 **SECTION 7.** 227.19 (3m) of the statutes is amended to read:

18 227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis
19 specified under sub. (3) (e) is not required for any rule if the agency, after complying
20 with s. 227.114 (1) to (5), board determines that the rule will not have a significant
21 economic impact on a substantial number of small businesses.

22 **SECTION 8.** 227.24 (3m) (intro.) of the statutes is amended to read:

23 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
24 On the same day that the agency files a rule under sub. (3) that may have ~~a~~
25 significant an economic impact on small businesses, as defined in s. 227.114 (1), the

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1 agency shall submit a copy of the rule to the small business regulatory review board.
2 The board may use cost-benefit analysis to determine the fiscal effect of the
3 emergency rule on small businesses and shall determine whether the emergency
4 rule will have a significant economic impact on a substantial number of small
5 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14
6 (2m). If the board determines that the emergency rule will not have a significant
7 economic impact on a substantial number of small businesses, the board shall submit
8 a statement to that effect to the agency that sets forth the reason for the board's
9 decision. If the board determines that the emergency rule will have a significant
10 economic impact on a substantial number of small businesses, the board may submit
11 to the agency and to the legislative council staff suggested changes in the emergency
12 rule to minimize the economic impact of the emergency rule. If the board determines
13 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
14 shall notify the agency of that determination and ask the agency to comply with any
15 of those provisions. In addition, the board may submit other suggested changes in
16 the proposed rule to the agency and may include a request that the agency do any
17 of the following:

18 **SECTION 9.** 285.79 (3) (intro.) of the statutes is amended to read:

19 ~~285.79 (3) ASSISTANCE PROGRAM. (intro.) The department shall, in cooperation~~
20 ~~with the small business ombudsman clearinghouse office of regulatory assistance~~
21 ~~under s. 560.03 (9) 560.415 (2) (b), develop and administer a small business~~
22 ~~stationary source technical and environmental compliance assistance program. The~~
23 ~~program shall include all of the following.~~

24 **SECTION 10.** 560.03 (9) of the statutes is repealed.

25 **SECTION 11.** 560.11 (2) of the statutes is amended to read:

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1 560.11 (2) The employees of the department of commerce who staff the serve
2 as ombudsman for small business ombudsman clearinghouse stationary sources
3 under s. ~~560.03 (9)~~ 560.415 (2) (b) and the employees of the department of natural
4 resources who staff the small business stationary source technical and
5 environmental compliance assistance program under s. 285.79 shall provide the
6 small business environmental council with the assistance necessary to comply with
7 sub. (1).

8 **SECTION 12.** 560.41 (intro.) of the statutes is amended to read:

9 **560.41 Definitions.** (intro.) In this subchapter, unless the context requires
10 otherwise:

11 **SECTION 13.** 560.41 (3) of the statutes is created to read:

12 560.41 (3) "Small business" has the meaning given in s. 227.114 (1).

13 **SECTION 14.** 560.41 (4) of the statutes is created to read:

14 560.41 (4) "Small business regulatory coordinator" means the employee of an
15 agency designated by the agency as required under s. 227.114 (7m).

16 **SECTION 15.** 560.415 of the statutes is created to read:

17 **560.415 Responsibilities related to small businesses.** (1) OFFICE
18 ORGANIZATION. The office shall be modeled on the best practices of both state and
19 federal small business advocacy organizations, shall take a proactive role in
20 maintaining and helping small businesses grow economically, and shall have the
21 goal of creating jobs and a healthy small business sector. The staff of the office shall
22 serve as staff to the small business regulatory review board and shall cooperate with
23 the small business regulatory coordinator designated by each agency under s.
24 227.114 (7m) to accomplish the objectives of this section, as appropriate.

25 (2) OFFICE FUNCTIONS. The office shall do all of the following:

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1 (a) Assist agencies to comply with the requirements under s. 560.43 (3).

2 (b) Serve as ombudsman for small business stationary sources, as defined in
3 s. 285.79 (1), in connection with the implementation of the federal Clean Air Act, 42
4 USC 7401 to 7671q.

5 (c) Upon the written request of a small business against which an agency has
6 initiated an enforcement action that may, in the opinion of the small business, cause
7 unnecessary hardship to the small business, review and investigate the
8 circumstances of the enforcement action and prepare recommendations regarding
9 alternative penalties to be imposed upon the small business that will, in the opinion
10 of the office, achieve regulatory compliance by the small business.

11 (d) Submit to the small business regulatory coordinator of the agency initiating
12 the enforcement action under par. (c) all of the following:

13 1. A copy of the written request submitted to the office under par. (c).

14 2. Any recommendations prepared by the office under par. (c).

15 3. A statement requesting that the small business regulatory coordinator
16 submit to the office within 15 business days after receipt of the statement a written
17 response describing the enforcement action taken by the agency, or that the agency
18 intends to take, against the small business and what, if any, considerations were
19 made for the small business as a result of the recommendations made under subd.

20 2.

21 (e) Annually do all of the following:

22 1. Compile the written requests received by the office under par. (c), the
23 submissions made by the office under par. (d), and any communications received
24 from agencies under par. (d).

BILL

2. Analyze and evaluate the information under subd. 1. and any other relevant information to determine regulatory enforcement trends and the efficacy of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

3. Report the information and findings under subds. 1. and 2. to the governor and to the legislature under s. 13.172 (2).

SECTION 16. 560.42 (1m) (b) of the statutes is amended to read:

560.42 (1m) (b) Serve as a liaison between businesses and agencies, federal agencies, authorities, municipalities, and local economic development organizations.

SECTION 17. 560.43 (3) of the statutes is created to read:

560.43 (3) ^{CS} ENCOURAGEMENT OF ^{OF SMALL BUSINESSES} PARTICIPATION IN RULE MAKING. Each agency shall establish methods to encourage the participation of small businesses in rule making

under s. 227.114 (4), and shall cooperate with the office to accomplish the objectives of ss. 227.04, 227.114, ^{560.43(9)} and ^{and the small business ombudsman clearinghouse} 560.415.

SECTION 18. Initial applicability.

(1) The treatment of section 227.14 (2g) (intro.) of the statutes first applies to a proposed administrative rule submitted by an agency to the legislative council staff under section 227.15 of the statutes on the effective date of this subsection.

(2) The treatment of section 227.24 (3m) (intro.) of the statutes first applies to an emergency rule filed with the legislative reference bureau on the effective date of this subsection.

(END)

560.42 as they relate to small businesses

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0458/2ins
MPG:.....

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INSERT A

Small business regulatory coordinators and the Office of Regulatory Assistance

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce operates a Small Business Ombudsman Clearinghouse (clearinghouse) to, in part, assist agencies to encourage the participation of small businesses in rule making and an Office of Regulatory Assistance (office) to assist all businesses with permitting and other regulatory compliance.

The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the clearinghouse and the office to facilitate communication between small businesses and state agencies with respect to administrative rules development and enforcement. Under the bill, the office ~~is required to~~ operate as a liaison between small businesses and agencies regarding small businesses' compliance with administrative rules and agencies' discretionary enforcement of rules violations against small businesses.

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END INSERT A

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INSERT 7-16

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SECTION ~~11~~ 227.19 (3) (intro.) of the statutes is amended to read:

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227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be

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in writing and shall include the proposed rule in the form specified in s. 227.14 (1),

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; the material specified in s. 227.14 (2) to (4); including any statement, suggested

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changes, or other material submitted to the agency by the small business regulatory

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review board; a copy of any economic impact report prepared by the agency under s.

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227.137; a copy of any report prepared by the department of administration under

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s. 227.138; a copy of any energy impact report received from the public service

1 commission under s. 227.117 (2)¹; and a copy of any recommendations of the
2 legislative council staff. The report shall also include all of the following:

3 **History:** 1985 a. 182; 1987 a. 253; 1987 a. 403 s. 256; 1989 a. 175; 2001 a. 87; 2003 a. 118, 277; 2005 a. 249; 2007 a. 20, 180.

3 **END INSERT 7-16**

4 **INSERT 11-10**

5 **SECTION ~~2~~ 560.42 (1m) (c) of the statutes is created to read:**

6 **560.42 (1m) (c) Serve as a liaison between small businesses and agencies to**
7 **accomplish the objectives of s. 227.04. ✓**

8 **END INSERT 11-10**